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Federal Judge Rules Espionage Laws Apply to Disclosures to Press

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WASHINGTON, March 14 — A Federal district judge in Baltimore has ruled that officials who make unauthorized disclosures of military or intelligence secrets can be prosecuted under laws barring espionage and theft of Government property.

The pretrial decision by Judge Joseph H. Young, which became publicly available today, marked the first time a judge definitively ruled that those laws were violated by unauthorized disclosures to reporters.

Judge Young's 24-page opinion denied a motion to dismiss criminal charges against Samuel Loring Morison, a naval intelligence analyst accused of giving a British military magazine three intelligence satellite photographs of a Soviet aircraft carrier under construction.

Judge Young had told lawyers in the case that he planned to deny the motion. The opinion giving the basis for his decision, dated Tuesday, was made public today.

'Danger Is Just as Great'

Judge Young's opinion said that although the case "does not involve a foreign agent or the classic spy scenario," this made no difference because "the danger to the United States is just as great when this information is released to the press as when it is released to an agent of a foreign government."

He said the "plain language" of the espionage laws supported the Government's position that one who "willfully transmits photographs relating to the national defense to someone who is known by the defendant not to be entitled to receive" them is guilty, "no matter how laudable his motives."

The judge said that the Government need not prove the defendant had any "evil purpose" or "intent to injure the

United States" under the two sections of the espionage laws of World War I vintage.

"Good intentions," such as fostering public discussion of security issues, would be no defense, Judge Young said. At most, he indicated, the prosecution would have to prove the information was closely held and potentially dam-

aging to the United States or potentially helpful to any foreign nation.

The judge noted that Mr. Morison had signed an agreement not to transmit information or documents to outsiders, but he did not say that such an agreement was essential to the prosecution.

An interagency Reagan Administration group said in 1982 that the espionage laws "could also be used to prosecute a journalist who knowingly receives and publishes classified documents or information." But no such prosecution has ever been brought, and Judge Young did not reach the issue.

Morton H. Halperin of the American Civil Liberties Union's National Security Project said of Judge Young's ruling: "If this opinion is upheld, we have an official secrets act in this country. Any Government employee who gives any classified information to any newspaper will have broken the law and any newspaper that publishes it will also have broken the law."

"The statute as interpreted would prevent much of current public debate on national security issues."

Mr. Morison, 40 years old, cannot appeal this ruling unless he is convicted at a trial. Judge Young this week set trial to begin July 15. Mr. Morison faces a maximum of 40 years in prison and a \$40,000 fine if convicted on all four counts.

Mr. Morison, grandson of the naval historian Samuel Eliot Morison, worked with the Navy's consent as part-time editor of Jane's Fighting Ships, a British publication, while he was a civilian employee of the Navy with a top-secret security clearance.

Aside from providing secret photographs to Jane's Defense Weekly, an affiliated publication, he is charged with theft and illegal possession of naval intelligence reports about an explosion at a Soviet naval base.

He has pleaded not guilty but has neither admitted nor denied taking the actions charged in the indictment.

The photographs were distributed by Jane's Defense Weekly to The Associated Press, which distributed them to American news media. The New York Times printed a photo Aug. 8. The Government takes the position that the pictures are still secret.

One Other Similar Case

The only previous espionage prosecution involving a disclosure to the press, rather than to a foreign agent, was that of Daniel Ellsberg and Anthony Russo, who were accused of making copies of the Vietnam War history that became the Pentagon Papers.

The New York Times and other newspapers published portions of these documents in 1971 but have never said where they were obtained.

Federal District Judge Matthew W. Byrne Jr. in Los Angeles dismissed the charges against Mr. Ellsberg and Mr. Russo in 1973 on the ground of Government misconduct. He had reserved a final ruling on whether the espionage and theft laws applied.

Mr. Morison's lawyers have argued that Congress did not intend the espionage and theft laws to apply to disclosures to the press. For Judge Young to do so, they said, would amount to judicial enactment of an "official secrets act" that Congress has repeatedly avoided lest it stifle public debate on military issues.

The defense lawyers, including Mark H. Lynch of the American Civil Liberties Union, also said it would be unconstitutional to use the broad, vaguely worded espionage and theft laws to punish disclosures to the press.

They said the Government had great latitude to discipline or dismiss employees who misused classified information, but that Congress had chosen not to make it a crime.